

48-101-513. Violations — Required notices, disclosures, records. —

(a) No charitable organization subject to this part shall solicit funds from the public, except for charitable purposes, or expend funds raised for charitable purposes for noncharitable purposes.

(b) Unfair, false, misleading or deceptive acts and practices affecting the conduct of solicitations for contributions are declared unlawful. No person shall use or intend to use false or materially misleading advertising or promotional material in connection with any solicitation for a charitable organization or a charitable purpose. It is the intent of the general assembly that the courts in interpreting this provision should look to the judicial interpretations given the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1, and § 5(A)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)) for guidance.

(c) No charitable organization subject to the provisions of this part shall use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state, but the use of the following statement shall not be deemed a prohibited exploitation: “Registered with the Tennessee Secretary of State as required by law. Registration No. _____.”

(d) No person shall, in connection with the solicitation of contributions for or the sale of goods or services of, a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization, or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(e) No person shall, in connection with the solicitation of contributions or the sale of goods or services for charitable purposes, represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes, or a charitable organization connected therewith, when such person has not given written consent to the use of such person's name for these purposes; any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given such member's consent to the use of such member's name in the campaign.

(f) No person shall make any representation that such person is soliciting contributions for or on behalf of a charitable organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

(g) No professional solicitor shall solicit, in any manner whatsoever, in the name of a charitable organization, whether exempt from this part or not, unless:

(1) Prior to the commencement of each solicitation campaign, a completed solicitation campaign notice has been filed by a professional solicitor with the secretary of state on forms prescribed by the secretary of state. Such notice shall include, but not be limited to, a description of the solicitation event or campaign, the location and the telephone number from which the solicitation is to be conducted, the names and residence addresses of each employee or other person who is working in connection with such campaign, and the account number and location of all bank accounts where receipts from such campaign will be deposited. An authorized official of the charitable organization on whose behalf the professional solicitor is acting, as well as an authorized official of the professional solicitor, shall certify that the solicitation campaign notice is true and complete. Within seventy-two (72) hours after any modifications or changes in the information or

documentation required herein, the secretary of state shall be notified in writing of such changes;

(2) [Deleted by 2007 amendment.]

(3) [Deleted by 2007 amendment.]

(4) (A) Prior to beginning any solicitation, such professional solicitor has filed with the secretary of state a true copy of any written agreement or contract which may have been entered into between a charitable organization and the professional solicitor, which shall state the minimum amount or percentage, if any, which a charitable organization shall receive of revenues solicited, after solicitation expenses, as a result of a solicitation campaign;

(B) If any agreement or contract between a professional solicitor and a charitable organization is oral, a written summary of the agreement or contract which sets forth the terms, conditions, fees, percentage splits and costs of the oral agreement or contract must be submitted to the secretary of state prior to beginning any solicitation or sales promotion campaigns;

(C) Within seven (7) days of any change, modification or termination of any agreement or contract that a professional solicitor has entered into with a charitable organization, a notice of such change, modification or termination must be filed with the secretary of state, along with a true copy of the new agreement which includes the changes and modifications in the terms, conditions, fees, percentage splits and costs.

(h) [Deleted by 2007 amendment.]

(i) (1) A fund-raising counsel, upon entering into an agreement with any charitable organization, whether exempt from this part or not, must submit to the secretary of state a true copy of any written agreement or contract with a charitable organization prior to beginning any consultation services. If the agreement or contract is oral, a written summary of the agreement or contract which sets forth the terms, conditions and consulting fees of the agreement or contract must be submitted to the secretary of state prior to beginning any consultation services.

(2) Within seven (7) days of any change, modification or termination of any agreement or contract a fund-raising counsel has entered into with a charitable organization, a notice of such change, modification or termination must be filed with the secretary of state, along with a true copy of the new agreement which includes the changes and modifications in the terms, conditions or consulting fees.

(j) (1) A paid solicitor shall be responsible for complying with, or for causing compliance with, each of the following requirements:

(A) Prior to orally requesting a contribution, or contemporaneously with a written request for a contribution, it shall be clearly and conspicuously disclosed at the point of solicitation the name of the paid solicitor as on file with the division and that the solicitation is being conducted by a paid solicitor;

(B) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, a written confirmation shall be sent to each person who has contributed or pledged to contribute, within five (5) days after that person has been solicited, which shall include a clear and conspicuous disclosure of the information required by subdivision (j)(1)(A); and

(C) It shall not be represented that tickets to events will be donated for use by another, unless the following requirements have been met:

(i) The paid solicitor has commitments in writing from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept; and

(ii) No more contributions for donated tickets shall be solicited than the number of ticket commitments received from charitable organizations.

(2) The professional solicitor shall maintain a record of the names of donors, their addresses and the date that their donations were received for a three-year period after a solicitation campaign has been completed. No donor list, information or documentation, required to be maintained under this subsection (j), which is obtained by the secretary of state pursuant to this part, unless otherwise ordered by a court for good cause shown, shall be produced for inspection, copied by or its contents disclosed to any person other than an authorized representative of the secretary of state, the attorney general and reporter or the attorney general and reporter's representative, or other proper law enforcement officials for the purpose of enforcing the provisions of this part or prosecuting other criminal or civil violations, without the consent of the person who produced the information or documentation. The secretary of state, the attorney general and reporter or the attorney general and reporter's representative or other proper law enforcement officials may use such information or documentation as determined necessary in the enforcement of this part or other criminal or civil laws, including the presentation as part of any administrative or judicial proceedings.

(3) Prior to the commencement of each solicitation campaign, a professional solicitor shall file with the secretary of state copies, or samples, of each type of solicitation campaign literature or promotional materials utilized in the solicitation campaign, including, but not limited to, the text of any solicitation scripts or pitches made to the public orally, which is utilized in the campaign. Within seven (7) days after any modification or changes in campaign solicitation literature or promotional materials utilized by the professional solicitor, the secretary of state shall be notified in writing and be given samples or copies of such changes and modifications.

(k) No person shall, in connection with the solicitation of contributions or the sale of goods, magazines, newspaper advertising, or any other service, use the name "POLICE," "FIREFIGHTER," or "FIREMEN," unless properly authorized by a bona fide police or firefighter organization or police or fire department. Such authorization must bear the signatures of two (2) bona fide members of the organization or department.

(l) (1) No person or organization, subject to this part, who fails to file any registration application, statement, report, or other information required to be filed with the secretary of state under this part as a prerequisite to registration shall engage in any of the activities permitted duly registered persons or organizations under the provisions of this part. No person or organization shall engage in charitable solicitation without a current registration; and

(2) No professional solicitor shall engage in solicitations on behalf of a nonexempt charitable organization, if such professional solicitor has knowledge that such nonexempt organization has failed to file a registration application with the secretary of state.

(m) [Deleted by 2007 amendment.]

(n) A professional solicitor, such professional solicitor's agent, servant or employee shall disclose upon request by the solicitee the percentage of gross contributions raised by the professional solicitor which shall be received by the charitable organization after solicitation expenses, if known, or otherwise disclose the guaranteed minimum contract amount, which the charitable organization shall receive as a result of the solicitation campaign.

[Acts 1976, ch. 735, § 13; T.C.A., § 48-2213; Acts 1989, ch. 285, §§ 23-29; 1991, ch. 299, § 9; 1993, ch. 252, § 5; 1994, ch. 667, §§ 25-30; T.C.A., § 48-3-513; Acts 2007, ch. 523, §§ 25-33.]